

IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF: CITY OF THOR Wastewater Facility No. 46-80-0-01	ADMINISTRATIVE CONSENT ORDER NO. 2007-WW-16
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TO: City of Thor
Attn. City Clerk
P.O. Box 25
Thor, IA 50591-0025

I. SUMMARY

This administrative consent order (order) is entered into between the City of Thor and the Iowa Department of Natural Resources (Department). Pursuant to the terms of this consent order, Thor agrees to comply with its National Pollution Discharge Elimination System (NPDES) permit number #46-80-0-01 by timely submitting its Monthly Operation Reports (MORs) and pay a penalty of \$2,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Inspector
IDNR Field Office #2
2300 15th St., S.W.
Mason City IA, 50401
Ph: 641/425-4073

Relating to legal requirements:

David L. Wornson, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. The City of Thor owns and operates a public water treatment, water distribution and wastewater treatment facility (WWTF). The City of Thor's public water treatment and distribution system is classified as Grade 1 and the wastewater treatment is a lagoon treatment system classified as Grade 1. The City of Thor operates the WWTF and discharges waste water pursuant to a NPDES permit #46-80-0-01.

2. As the result of inspections of the WWTF and Department review of monthly operation reports (MORS), the Department has documented a recent history of untimely, incomplete and in some cases inaccurate record-keeping and facility operation deficiencies in violation of Department rules and the City of Thor's NPDES permit conditions.

3. The Department sent a letter dated February 5, 2004 to the facility operator, Jon Matteson, with a copy to the City of Thor advising them that 11 consecutive MORS had been submitted late.

4. The Department conducted a WWTF inspection on August 23, 2004 and provided a report to the City of Thor by letter dated August 31, 2004. The inspection report noted that the NPDES permit required submission of MORS by the 15th of the month following the reporting month. The inspector found that there were several months of delinquent MORS.

5. The Department conducted a WWTF inspection on March 16, 2006. The inspection report dated March 24, 2006 sent to the City of Thor noted that the facility operator, Jon Matteson, had been recording the third-day sample results in the first day of drawdown on MORS. The report noted that 13 of the past 18 MORS had been submitted after the 15th of the month following the reporting month in violation of the NPDES permit.

6. The Department sent a NOV to Jon Matteson and the City of Thor dated May 9, 2006 advising them that the MOR for the month of March had not been submitted until May 4, 2006. The Department issued a second NOV dated June 8, 2006 stating that the April MOR had not been submitted until June 7, 2006. The letter reminded the parties of the requirements in the NPDES permit and requested a response within 7 days to explain measures they would be taken to remedy this pattern of untimely submittals.

7. The Department conducted a WWTF inspection on July 7, 2007. The inspection report dated July 19, 2007 sent to the City of Thor found that 12 of 16 MORS reviewed were submitted late. The report also found that Mr. Matteson takes influent flow measurements two to three times per week whereas the NPDES permit requires daily monitoring. The records showed that two of three wastewater discharge events were improperly reported and the June 2007 discharge was not reported.

IV. CONCLUSIONS OF LAW

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1. Iowa Code section 455B.173 authorizes the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The terms of the City of Thor's NPDES permit require submission of MORs to the Department by the fifteenth day following the close of the reporting period. The City of Thor has failed to comply with the NPDES permit requiring timely submittal of MORs.

2. 567 IAC 63.7 requires that "Records of operation shall be submitted to the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit." 567 IAC 63.8 requires that records of operation be submitted on monthly intervals. The City of Thor has failed to timely submit MORs in violation of this rule.

V. ORDER

THEREFORE, the Department orders and the City of Thor agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. The City of Thor shall pay a penalty in the amount of \$2,000.00 within 30 days after the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in Chapter 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties for current violations and stipulated penalties in the event of future violations.

2. **Economic Benefit:** Any economic benefit derived from these violations is nominal. The Department has decided not to assess an amount for this factor.

3. **Gravity of the Violation:** Monitoring and reporting are an essential part of the Department's regulatory program to ensure that WWTFs are properly operated. Self regulation and Department oversight and reliance on monthly reporting are essential tools to prevent and respond to illegal discharges of waste water to water of the state and navigable waters of the United States. The City has submitted untimely MORs on a consistent basis over at least the past 3 years. The Department is authorized to apply an assessment for this factor of up to \$3,000. The Department assesses \$1,500 for this factor.

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4. **Culpability:** The City of Thor as well as its operator in charge have been consistently advised of the requirement to submit monthly MORs by the 15th of the month following the reporting period. Despite these warnings, the 2007 inspection report showed 12 out of 16 months of untimely MOR submittals. The Department has the authority to assess up to \$3,000 for this factor. The Department assesses \$1,500 for this factor.

Mitigation: In recognition that the City of Thor is a very small community with limited public resources, the assessment is reduced by \$1,000.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the City of Thor. By signature to this order, The City of Thor waives all rights to appeal this order.

VIII. NONCOMPLIANCE

Compliance with sections V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

City of Thor
CITY OF THOR
BY: [Signature]
Mayor

Dated this 1 day of
OCTOBER, 2007

[Signature]
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12 day of
October, 2007

NPDES permit #3863, Jeff Vansteenbergh Field Office 2, David Wornson, I.B.2.a.